

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RONALD STEVENS LIBERATORE,
Plaintiff,
v.
STATE OF CALIFORNIA,
Defendant.

Case No. [16-cv-3439-TEH](#)

ORDER OF DISMISSAL WITH LEAVE
TO AMEND

Plaintiff, an inmate at San Quentin State Prison, filed this pro se civil rights action under 42 U.S.C. § 1983. Plaintiff has paid the filing fee. His complaint is now before the Court for initial screening pursuant to 28 U.S.C. § 1915A.

I

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." Id. § 1915A(b). Pleadings filed by pro se litigants, however, must be liberally construed. Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010); Balistreri v. Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir.

1 1990).

2 To state a claim under 42 U.S.C. § 1983, a plaintiff must
3 allege two essential elements: (1) that a right secured by the
4 Constitution or laws of the United States was violated, and (2)
5 that the alleged violation was committed by a person acting under
6 the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

7 II

8 Plaintiff presents various allegations regarding his time in
9 prison including the confiscation of property.

10 Neither the alleged negligent nor intentional deprivation of
11 property states a due process claim under § 1983 if the
12 deprivation was random and unauthorized. Parratt v. Taylor, 451
13 U.S. 527, 535-44 (1981) (state employee negligently lost
14 prisoner's hobby kit), overruled in part on other grounds,
15 Daniels v. Williams, 474 U.S. 327, 330-31 (1986); Hudson v.
16 Palmer, 468 U.S. 517, 533 (1984) (intentional destruction of
17 inmate's property). The availability of an adequate state post-
18 deprivation remedy, e.g. a state tort action, precludes relief
19 because it provides adequate procedural due process. King v.
20 Massarweh, 782 F.2d 825, 826 (9th Cir. 1986). California law
21 provides an adequate post-deprivation remedy for any property
22 deprivations. Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir.
23 1994) (citing Cal. Gov't Code §§ 810-895).

24 It is difficult to discern the exact nature of Plaintiff's
25 allegations. He states that correctional officers confiscated
26 his headphones and perhaps his television. He also describes
27 improper medical care from 1993 to 2000 at California Medical
28 Facility in Vacaville and at U.C. Davis Hospital. He also states

1 that computers are disrupting his bodily functions.

2 Plaintiff's allegations fail to state a claim; therefore the
3 complaint is dismissed with leave to amend. With respect to the
4 deprivation of property, Plaintiff must address the post-
5 deprivation remedy provided by the state. Plaintiff's medical
6 claims appear time barred and occurred in the Eastern District of
7 California. Plaintiff's remaining allegations are frivolous. If
8 Plaintiff files an amended complaint he must identify the
9 specific defendants and describe how they violated his
10 constitutional rights.

11 III

12 For the foregoing reasons, the Court hereby orders as
13 follows:

14 1. Plaintiff's Complaint is DISMISSED WITH LEAVE TO FILE A
15 FIRST AMENDED COMPLAINT, within twenty-eight days containing all
16 related claims against all Defendants that Plaintiff wishes to
17 proceed against in this action. The pleading must be simple,
18 concise and direct and must state clearly and succinctly how each
19 and every Defendant is alleged to have violated Plaintiff's
20 federally-protected rights. See Leer, 844 F.2d at 634. The
21 pleading must include the caption and civil case number used in
22 this order and the words COURT ORDERED FIRST AMENDED COMPLAINT on
23 the first page. Plaintiff is advised that he must file all of
24 his claims in one complaint and not present them piecemeal to the
25 Court in various letters and other documents. Failure to file a
26 proper First Amended Complaint within twenty-eight days of this
27 order will result in the dismissal of this action.

2. Plaintiff is advised that the First Amended Complaint will supersede the original Complaint and all other pleadings. Claims and defendants not included in the First Amended Complaint will not be considered by the Court. See Lacey v. Maricopa County, 693 F.3d 896 (9th Cir. 2012) (en banc) ("For claims dismissed with prejudice and without leave to amend, we will not require that they be repled in a subsequent amended complaint to preserve them for appeal. But for any claims voluntarily dismissed, we will consider those claims to be waived if not repled.").

3. It is Plaintiff's responsibility to prosecute this action. Plaintiff must keep the Court informed of any change of address by filing a separate paper with the Clerk headed "Notice of Change of Address," and must comply with the Court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: 7/21/2016



THELTON E. HENDERSON
United States District Judge

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